

# MIMS EULA

## MIMS End User License Agreement (Version Aug 2012)

UBM Medica End User Licence Agreement IMPORTANT - CAREFULLY READ THE FOLLOWING TERMS AND CONDITIONS. BY INSTALLING, DOWNLOADING OR ACCESSING OR OTHERWISE USING THE DATABASE WITHIN THE SOFTWARE YOU ("LICENSEE") AGREE TO BE BOUND BY THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT DO NOT INSTALL OR USE THE DATABASE OR ANY UPGRADE OR SUPPLEMENT TO THE DATABASE. ONCE THE DATABASE HAS BEEN INSTALLED, ANY PERSON SUBSEQUENTLY OPENING OR USING THE DATABASE WILL BE DEEMED TO BE A USER AND SUBJECT TO THE TERMS AND CONDITIONS OF THIS AGREEMENT.

### LICENCE

UBM Medica grants to You and You accept, a non-transferable and non-exclusive licence to use the Database within the Product in the Territory, subject to the terms of this Agreement and the following conditions: You may only copy the Database within the Product into a machine readable form for backup purposes only (but for no other purpose) in support of Your use of the Product. UBM Medica, however, may include mechanisms to limit or inhibit such copying; and You may not: alter, merge, modify or adapt the Database within the Product in any way, including but not limited to disassembling or decompiling; loan, rent, lease or license the Database or transfer the Database or any copy, in whole or in part, in any way, including but not limited to disassembling or decompiling, except as expressly provided for in this license, (collectively the UBM Medica Licence).

### TERMINATION

UBM Medica has the right to immediately terminate Your UBM Medica Licence if: the Vendor is in breach of any of its obligations to UBM Medica, and that breach has not been remedied to the satisfaction of UBM Medica within the requisite time period; the Customer is in breach of any of its obligations to UBM Medica, and that breach has not been remedied to the satisfaction of UBM Medica within the requisite time period; or You fail to comply with any term of this Agreement.

### LIMITED WARRANTY

UBM Medica warrants that: except as specifically provided herein, except for any condition or warranty the exclusion of which could be void or otherwise contravene the Competition and Consumer Act 2010 (Cth) or any other applicable law (Non Excludable Condition) UBM Medica makes no warranty or representation, either express or implied, with respect to the Database or other goods or services it supplies; except for any Non Excludable Condition, UBM Medica excludes all liability for the breach of any warranty or condition of any kind in respect of the Database or other goods or services it supplies; and where legislation implies into this Agreement any Non Excludable Condition, UBM Medica's liability for any breach of such Non Excludable Condition will be limited at UBM Medica's sole discretion to one or more of the following: in the case of goods, any one or more of the following: the replacement of the goods or the supply of equivalent goods; the repair of the goods; the payment of the cost of replacing the goods or of acquiring equivalent goods; the payment of the cost of having the goods repaired; or in the case of services: the supplying of the services again; or the payment of the cost of having the services supplied again.

### LIMITATION OF LIABILITY

To the fullest extent allowed under the Competition and Consumer Act 2010 (Cth) or any other applicable law except for liability for any Non Excludable Condition: in no event will UBM Medica be liable for any indirect loss, consequential loss, loss of profits, loss of revenue, loss of goodwill, exemplary damages, punitive damages or special damages in connection with or arising out of use of the Database, the accuracy of the data contained in the Database, any breach of this Agreement and any negligence in UBM Medica performing its obligations under this Agreement; and in no event will UBM Medica's liability to You for any claim or damage arising out of or in connection with this Agreement exceed \$10,000.

### INTELLECTUAL PROPERTY

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All Intellectual Property Rights and other proprietary rights in or related to the Database are and will remain UBM Medica's exclusive property, whether or not specifically recognised or perfected under local applicable law and You must not take any action that jeopardises UBM Medica's proprietary rights. Subject to this Agreement no licence, right or interest in any UBM Medica trade-marks, service marks or trade names is granted to You under this Agreement. If an action is brought against You claiming that the Database infringes the Intellectual Property Rights of a third party, UBM Medica will, at its expense, defend or, at its option, settle the action and, subject to this clause 5, indemnify You against any loss, cost or expense (including reasonable legal fees and expenses), demand or liability, whether direct or indirect, arising out of any such claim, but only if: You notify UBM Medica promptly of any infringement, suspected infringement or alleged infringement; UBM Medica has sole control over the defence of the claim and any negotiation for its settlement or compromise; You make no admission of liability, do not incur any legal expenses in connection with the claim except as would be reasonable in the circumstances, or agree to any compromise or settlement without UBM Medica's prior written consent, and take no other action that is contrary to UBM Medica's interests; and You provide UBM Medica with all available information and assistance as UBM Medica may reasonably require in respect of any proceedings. If a claim described above has been asserted, UBM Medica will, at UBM Medica's sole option and expense: procure the right for You to continue using the Database; or replace or modify the Database to eliminate the infringement while providing functionally equivalent performance; or accept the return of the Database and refund You such proportion of the fees actually paid by You to UBM Medica for such Database (where appropriate), which represent the period for which You have not had use of the Database. UBM Medica will have no obligation to defend and indemnify You in respect of any claims that the Database infringes the Intellectual Property Rights of a third party, to the extent that a claim results from: a correction to or modification of the Database not provided by UBM Medica; use of the Database other than in accordance with the relevant documents or this Agreement; use of an out of date edition of the Database; or use of the Database in conjunction with other products that are not owned by UBM Medica (other than as contemplated by this Agreement). To the full extent permitted by the Competition and Consumer Act 2010 (Cth) or any other applicable law, the remedies contained in this section constitute Your sole and exclusive remedies and UBM Medica's entire liability under this Agreement with respect to infringement of third party Intellectual Property Rights.

## **INDEMNITY FROM YOU**

You agree to indemnify, defend and hold UBM Medica harmless against any claims, liabilities, proceedings, costs, losses, expenses or damages incurred by UBM Medica in connection with Your use of the Database (including, without limitation, any use by You of an out of date edition of the Database or use of the Database outside the Territory) that is in breach of this Agreement or any other negligent or wrongful act or omission by You.

## **DATABASE**

The Intellectual Property Rights in the Database is UBM Medica's and may only be used by You in accordance with this Agreement. Apart from any fair dealing for the purposes of private study, research, criticism or review as permitted under any applicable law, no part may be reproduced by any process or stored in or transmitted by any retrieval system without UBM Medica's prior written permission (save as provided for in clause 1.1(a)). The Database provides to You information on the most commonly prescribed medicines in the Territory, such information having been produced by UBM Medica's review of prescribing information and product packaging that has been approved by the Agency (where appropriate); such information having been produced by the review of published primary and secondary medicine literature; and abbreviated information on medicines available in the Territory, such information having been produced by the review of third party data sources, including the approved product information. In each case, any omissions are due to the necessary information not being available to UBM Medica at the time of publication. Although every effort has been made in compiling and checking the information in the Database to ensure that it is accurate, the authors and UBM Medica and UBM Medica's servants and agents shall not be responsible for the continued currency of the information or for any errors, omissions or inaccuracies in the Database, the information or the Intended Results from using the Database, whether arising from negligence or otherwise, howsoever or for any consequences arising there from. The selection of a therapy based on the information contained in the Database and the Intended Results is Your responsibility and to the fullest extent permitted by law UBM Medica accepts no liability whatsoever for the clinical decisions taken by You. Use of the Database does not replace the professional judgement of a medical practitioner. Liability for clinical decisions is the sole responsibility of the medical practitioner in charge of the treatment. The Database within the Product must only be used on condition that You and any medical practitioner using information in the Database verify any information contained in the Database to the information contained in the corresponding pharmaceutical products specifications. The Database includes information provided by third parties. This information is identified with the name of the source and has been chosen for publication because UBM Medica believes it to be reliable. The Database may also contain links to Internet sites maintained by third parties over which UBM Medica has no control, nor does UBM Medica have full knowledge of the content of such sites. To the extent permitted by law, UBM Medica, its employees and agents accept no liability (including negligence) for any injury, loss or damage caused by the reliance on any part of this third party information. UBM Medica does not warrant that the functions contained in the Database within the Product will meet Your requirements or that the operation of the Database will be uninterrupted or error free. To the extent permitted by law, the warranties and remedies set forth herein are exclusive and in lieu of all others, oral or written, expressed or implied.

## **CONFIDENTIAL INFORMATION**

You agree that unless authorised by UBM Medica in writing You must: not disclose any Confidential Information to any other person other than You and Your employees, officers, consultants or related bodies corporate who need to know the Confidential Information for the purposes of You performing Your obligations under this Agreement, and who agree to observe the terms of this clause 8, provided that You will be responsible for any breach of this Agreement by You and Your employees, officers, consultants or related bodies corporate; not make use of any Confidential Information for any purpose other than for the purpose of performing its obligations under this Agreement; and keep the Confidential Information secure and protect it from unauthorised use, reproduction, access and damage or destruction. Unless otherwise agreed in writing, on the termination of this Agreement or upon written notice by UBM Medica, all Confidential Information whether in hard copy or electronic form will be returned to UBM Medica or destroyed (at the UBM Medica's option) as soon as reasonably practicable and in any event within 7 days of the date of such termination or notice and certify by a letter signed by You or Your director or other authorised officer that You have unconditionally complied with Your obligations under this clause. In the event of a breach or threatened breach of the terms of this clause 8 by You, UBM Medica is entitled to an injunction restraining You from committing any breach of this clause 8 without showing or proving any actual damage sustained by You and that the obtaining of an injunction is without prejudice to the rights of UBM Medica to seek damages for loss suffered as a result of a breach of this clause 8 by You. Notwithstanding any other clause of this Agreement, You accept full responsibility for the security of the copy of the Database within the Product You shall allow UBM Medica or UBM Medica's auditors or other persons duly authorised by UBM Medica access to the copy of the Database provided to You during Your business hours, upon receipt of reasonable notice from UBM Medica. You acknowledge and agree that in respect of this Agreement You will comply with the Privacy Act 1998 (Cth) and any other privacy laws applicable in Australia. You will use the same degree of care, but no less than a reasonable degree of care, as You use with respect to Your own similar information to protect the Confidential Information and to prevent any use of Confidential Information not authorised in this Agreement, dissemination of the Confidential Information to any employee, director, agent or sub contractor of You, communication of the Confidential Information to any third party, or publication of the Confidential Information.

## GENERAL

You may not assign or transfer this Agreement. Notwithstanding that any provision of this Agreement may prove to be illegal or unenforceable, the remaining provisions of this Agreement shall continue in full force and effect. A person or entity, other than UBM Medica or You, who is not a party to this Agreement, shall have no right to enforce any term of this Agreement. You acknowledge that You have read this Agreement and understood and agree to be bound by its terms and conditions prior to You using the Database and You warrant that You comply with the provisions of this Agreement. You further agree that it is the complete and exclusive statement of the Agreement between You and UBM Medica, which supersedes any proposal or prior agreement, oral or written, and any other communication between You and UBM Medica relating to the subject matter of this Agreement. This Agreement is governed by the laws of New South Wales, Australia.

## DICTIONARY

Agency means the Therapeutic Goods Administration of Australia. Agreement means this document and any annexure, schedule or modification made to it. Confidential Information means information concerning any documentation, trade secrets, processes, data and know how, software, records, drawings, graphs, formulae, program files, flowcharts, samples, techniques, source and object code, standards, specifications, improvements, inventions, techniques, customer information, accounting data, statistical data, research projects, development and marketing plans, strategies, forecasts, computer programs, and customer lists, electronic data and any other means by which the information may be stored or reproduced which is, or which You ought to have known is confidential or proprietary in nature to UBM Medica. Confidential Information includes the Database and Documentation. Customer means the entity licensed to give You access to use the Product. Database means the data developed by UBM Medica as updated, upgraded or modified from time to time and included in the Product. Documentation means the documentation relating to the use of the Product and the Database. Intellectual Property Rights means all rights, whether registered or unregistered in any patent, trade mark, trade name, business name, company name, copyright, registered design or other design right or circuit layout right, know-how, confidential information or proprietary information or any similar rights of intellectual property, and any applications for, or rights to obtain or acquire, any such rights. Intended Results means the use of the Database in the Product as a reference product and to return information to You. Product means the software which incorporates the Database. Territory means Australia. UBM Medica means UBM Medica Australia Pty. Ltd (ABN 68 050 695 157) of 2nd Floor, 1 Chandos Street, St Leonards NSW 2065 Australia. Vendor means the entity which has a valid licence agreement with UBM Medica to sub-licence the Database and Product to the Customer. You, Your means the licensee of this UBM Medica Licence. Should You have any questions concerning this Agreement, please write to UBM Medica at: UBM Medica Australia Pty. Ltd. PO Box 3000 St Leonards NSW 1590